

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7767 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SUKHIYABEN NARANBHAI KANOJIYA GRAND MOTHER OF DETENUE-

Versus

COMMISSIONER OF POLICE

Appearance:

MS SM AHUJA for Petitioner

MR LR PUJARI Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 25/02/99

ORAL JUDGEMENT

1. In this petition under Article 226 of the Constitution of India, the petitioner has challenged the detention order dated 1.8.1998 passed by the Police Commissioner, Ahmedabad under sec. 3(2) of the Prevention of Anti-Social Activities Act. and has prayed for quashing of the said order and has further prayed for immediate release of the detainee from illegal detention.

2. From the grounds of detention, it appears that on account of registration of one case against the detenu under Bombay Prohibition Act, and on account of the statements of two confidential witnesses, the detaining authority arrived at subjective satisfaction that the detenu is a bootlegger and his activities were prejudicial for maintenance of public order. Consequently, the impugned order was passed. This order is challenged on the sole ground that the activities of the detenu cannot be said to be prejudicial for maintenance of public order and the alleged activities disclosed in the grounds of detention were not such activities of the detenu that even tempo of life of locality or the members of the public was disturbed.

3. Under Section 2(b) of the Prevention of Anti Social Activities Act, the detenu was rightly adjudged as bootlegger inasmuch as one registered case under the Bombay Prohibition Act came into existence against him and two confidential witnesses also stated about the bootlegging activities of the detenu.

4. A bootlegger, however, can be preventively detained under Prevention of Anti Social Activities Act only when his activities are found to be prejudicial for maintenance of public order. Learned A.G.P. has contended that keeping in view the recovery of huge quantity of liquor in the registered case against the detenu, it cannot be said that his activities were not prejudicial for maintenance of public order. In my opinion, mere recovery of huge quantity of liquor on one occasion cannot be sufficient for holding that the activities of the detenu were prejudicial for maintenance of public order. There is no indication in the grounds of detention that when huge quantity of liquor was recovered from the detenu and vehicle was seized, the detenu created obstruction in the process of search and seizure and created the situation which was prejudicial for the maintenance of public order at that time. Consequently, on the basis of this registered case, it cannot be said that the activities of the detenu on that occasion were prejudicial for maintenance of public order.

5. I am however, unable to accept the contention of the learned counsel for the petitioner that on account of single incident, the detenu could not be detained. The reason is that it is not only on account of single incident that the detention order has been passed. In addition to the registration of a case under the Bombay Prohibition Act, the detaining authority considered two

statements of confidential witnesses and on the basis of these statements, the detaning authority reached subjective satisfaction that the activities of the detenu were prejudicial for maintenance of public order. As such it has to be seen to what extent the activities of the detenu can be said to be prejudicial for the maintenance of public order.

6. The first witness has stated about the activities of the detenu loading cartons of foreign liquor in a Maruti near a temple. The witness objected, whereupon the detenu became excited. He beat the witness and had put a razor on his body and was threatened. On his alarm, witnesses from nearby locality collected. Seeing this, the detenu became further excited and rushed with razor towards gathered people, as a result of which, atmosphere of fear was created. According to the learned AGP, since this activity was near a temple, it created disturbance of public order. It was never indicated by the witness that loading and unloading of liquor was being done inside the temple premises. If this activity was outside the temple premises, it could have hardly affected public order. There is also no indication from the statements of witnesses that devotees were present either inside the temple premises or outside and for any reason whatsoever, they felt sense of insecurity, danger or alarm on account of loading of cartons of liquor by the detenu in a vehicle near the temple. The presence of other persons at that time is also not indicated. The only indication is that on the alarm raised by the witness, persons from vicinity collected at the spot. In spite of the allegation that razor was placed on the person of the witness no corresponding injury to the witness was alleged nor any injury was allegedly caused by the detenu to the persons who gathered at the spot. In this way, by this activity of the detenu, the public at large was not affected nor even tempo of life of the locality was affected nor sense of fear and insecurity in the mind of the inhabitants of the locality was created.

The second incident is also of similar nature. Here also the witness was beaten by the detenu with the help of his associates and still there is no allegation that the witness received any injury. Mere extending threat on the point of razor cannot be said to be a situation in which the public order was disturbed. If the witnesses collected on the alarm of the witness and they were chased by the detenu and his associates showing razor it can again be said that situation prejudicial for maintenance of public order was not created. If at all some beating took place between the detenu and two witnesses the situation did not travel beyond the

situation prejudicial for maintenance of law and order and not that a situation prejudicial for maintenance of public order was created.

7. In the result, the material on record is such from which subjective satisfaction of the detaining authority that the activities of the detenu were prejudicial for maintenance of public order cannot be sustained. Consequently, the impugned order becomes illegal and it deserves to be quashed. The writ petition, therefore, succeeds and is allowed. The impugned order of detention dated 1.8.1998 is hereby quashed. The detenu shall be released forthwith, unless wanted in some other case.
